UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1991/NGO/32
14 August 1991

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-third Session
Agenda item 4

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH
THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by International Work Group for Indigenous Affairs, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[14 August 1991]

PROTECTION OF JOURNALISTS

1. ARTICLE 19, the International Centre Against Censorship, urges the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its present session to authorize a preliminary study on ways to extend additional protections to journalists. By its decision 1990/116, the Sub-Commission decided to postpone consideration

GE.91-12799/1206H

of draft resolution E/CN.4/Sub.2/1990/L.45 until the forty-second session. The draft resolution welcomed the report prepared by Mr. Waleed Sadi entitled "Protection of journalists" (E/CN.4/Sub.2/1990/17) and decided to authorize:

> "a preliminary study on ways and means to extend additional protection and assistance to journalists and mass media personnel while they carry out their duties with objectivity and fairness, with a view to exploring the possibility of developing some basic principles and guidelines in this respect".

2. The rapporteur was invited, in particular: "(a) to analyse the different kinds of violations of journalistic rights, (b) to elaborate specific guarantees that may be necessary if journalists are to be able to pursue effectively their reporting of human rights violations, and (c) to propose concrete measures which the United Nations and member Governments might take to help protect and assist journalists and mass media personnel".

3. ARTICLE 19 urges the Sub-Commission to approve the substance of this draft resolution during the present session. The reasons for a preliminary study on ways to extend additional protection to journalists are, if anything, even more urgent than they were one year ago. Journalists, especially those who pursue their professional duties with dedication, have been subjected to an increased number of violent attacks, detentions and other harassments over the past year.

4. ARTICLE 19 has collected reliable information concerning 56 journalists killed since July 1990. Many were killed soon after reporting stories about government or non-governmental corruption, including involvement in drug-trafficking; others were killed after writing stories critical of government agents or non-governmental entities engaged in armed conflicts. One feature which characterizes most of the killings is that the assailants were never brought to justice; in many cases the Government was unable or unwilling to take credible steps even to investigate the killings.

5. ARTICLE 19 has received reliable information about more than 250 journalists who have been detained since July 1990. More than 120 remained in detention as of 25 July 1991.

6. The Gulf war highlighted the vulnerabilities of journalists and press freedom generally during periods of armed conflict. All parties to the conflict engaged in violations of fundamental press freedoms. Hundreds of journalists were detained or harassed. Some were detained for only brief periods, perhaps in order to discourage them from pursuing stories. More than 50 have been held by Iraq since March 1991, many of them reportedly in exchange for Iraqi POWs. A few were prosecuted by military tribunals for war-related reporting.

7. In a number of countries - including Algeria, Austria, Jordan, Tunisia, Turkey and the United States - police harassed or obstructed journalists who sought to cover deomonstrations against the war. Several countries - including Algeria, Morocco and Tunisia - expelled foreign journalists.

8. Several press monitoring groups criticized the coalition Governments for their manipulation of information. Pursuant to rules issued by the United States Defence Department on 7 January 1991, only journalists working in Pentagon-selected "pools" were permitted into conflict zones, reporters were required to travel with military escorts at all times, and all news reports had to be submitted to military officials for pre-publication clearance resulting in petty censorship (such as the block on a report that Navy pilots watched pornographic movies before their missions) and delays in issuing stories of sometimes as long as three days. Press groups complained that non-American and non-British journalists were discriminated against and journalists who sought to gather information independently were penalized. On several occasions, authorities issued misinformation; for instance, United States authorities told journalists that the Saudi border town of Khafji had been recaptured by coalition forces long before it had in fact been recaptured. Of particular concern was the coalition's interference with access to information, and areas where information might have been gathered, about the number of civilian casualties due to aerial bombing.

9. The information summarized above is more fully set forth in ARTICLE 19's publications, Stop Press: The Gulf War and Censorship and Killings and Detentions of Journalists: July 1990-July 1991. The information confirms the need for further study in order to seek ways to offer stronger protections to journalists as well as to elaborate clear guidelines concerning the exercise by journalists of the right to freedom of expression and access to information.

10. ARTICLE 19 is aware that some experts may believe that a study on the protection of journalists would overlap substantially with the excellent study already undertaken by Mr. Türk and Mr. Joinet on the right to freedom of opinion and expression. ARTICLE 19 has supplied information to those rapporteurs on various issues, and considers their report to be extremely valuable. ARTICLE 19 furthermore is of the opinion that the proposed study on protection of journalists could be so designed so as not to overlap in any way with the report on freedom of opinion and expression. The report on freedom of opinion and expression is a scholarly and comprehensive study of the main elements of the right to freedom of opinion and expression, such concepts as "democratic necessity" and "proportionality", positive government obligations to ensure media pluralism and a host of other issues crucial to the elaboration of the parameters of the right to freedom of opinion and expression in general.

11. In contrast, what is needed to enhance protections for journalists is a brief study that examines specific rights which may be necessary to protect journalists in pursuit of their professional duties and to effectuate the right of the public to receive information of legitimate public interest, especially concerning possible human rights abuses. A study of protections owed to journalists would in some ways resemble reports on protection of lawyers, although a study on protections for journalists could be considerably less complex. (See, for example, the working paper prepared by Mr. Joinet on "means in the area of monitoring by which the Sub-Commission could assist in ensuring respect for the independence of the judiciary and the protection of practising lawyers" (E/CN.4/Sub.2/1990/35), and the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.) ARTICLE 19 does not propose that every professional group engaged in effectuating or defending

human rights requires a separate set of protections. ARTICLE 19's point rather is that the right to freedom of expression and access to information is peculiarly underdeveloped in the area of journalists' rights and that a brief study could go a long way towards providing standards which non-governmental organizations and others could use in seeking to protect journalistic rights and thereby promote the public's right of access to information and government accountability.

12. The right of access to information is particularly important during periods of armed conflict both because of the need to ensure government accountability and because human rights violations are especially likely to be committed. Governments may owe a special duty to journalists to permit them to enter conflict zones. This duty, if it were to be articulated, might be based on the importance of human rights reporting as a means of monitoring, and thus discouraging, abuses during periods when abuses are particularly likely to be committed. This duty would include the duty not to harass journalists found within or seeking entry into conflict zones, such as by confiscating their equipment, or interrogating or detaining them.

13. Another interest of journalists which Governments may be obliged to respect is the right not to reveal the identity of their sources save in extraordinary circumstances. The right is necessary particularly if reporters are to be able to gather information on corruption and abuses by Governments and armed goups since, without recognition of such a right, sources are likely not to disclose information owing to fear of intimidation or attack.

14. It may also be useful to set forth in a document specifically concerning journalists' protections to which all people are entitled but which are especially important in safeguarding the ability of journalists to pursue their professional duties. The most important such obligation may be the Government's duty to investigate attacks and threatened attacks, and to prosecute and punish fully those identified as bearing responsibility. Even though the most serious attacks on journalists - namely, murders and disappearances - are generally not committed by Governments, none the less, government failure to conduct rigorous investigations serves to undermine journalists' rights to life and security of the person as surely as does direct Government commission of violations.

15. Another right owed to all people but particularly important for journalists is the right of civilians to be tried by regular courts. Journalists are especially liable to be tried by military courts for criticizing the military or for publishing stories about the military, even when the stories in no way implicate national security concerns.

16. For all of the above reasons, ARTICLE 19 respectfully urges the Sub-Commission to authorize a preliminary study on ways and means to enhance protection of journalistic rights.